

### **REMARKS**

Responsive to the Final Office Action dated January 11, 2008 and the Advisory Action dated March 18, 2008, Applicant submits its first Amendment After Final under 37 C.F.R. § 1.116. By this response, claims 21-30 and 32-40 are pending. Claims 21, 28, 32, and 37 are independent. Compared to prior versions, claims 31 and 41 are canceled. Claims 1-20 also remain canceled.

Substantively, the Examiner rejected claims 31 and 41 under 35 U.S.C. §101. She rejected claims 21-25, 26-29, and 31-41 as being obviously unpatentable over U.S. Patent No. 5,758,343 to Vigil (hereinafter “Vigil”) in view of U.S. Patent Publication No. 2002/0032775 to Venkataramaiah et al. (hereinafter “Venkataramaiah”). Claims 26 and 30 were rejected as obvious in view of the Vigil and Venkataramaiah combination, in further view of U.S. Patent Publication No. 2006/0129652 to Petrovskaya.

First, in accordance with 37 C.F.R. § 1.116(b)(1), claims 31 and 41 are canceled. Therefore, the many rejections of claims 31 and 41 are obviated.

Second, with reference to Venkataramaiah, the Advisory Action declares that the “Examiner does not use the date of ... provisional application No. 60/228,597” and that “the date of the papers for this invention based on the record of offices *is no earlier than 08/31/2001.*” *Emphasis added.* Therefore, the filing date of Venkataramaiah for 35 U.S.C. §102(e) purposes is August 28, 2001.

Furthermore, in accordance with 37 C.F.R. §1.116(e), an inventor affidavit is submitted herewith under 37 C.F.R. §1.131, providing detailed evidence attesting to the conception and reduction to practice of the instant invention before August 28, 2001. Among other things, it particularly references an original disclosure of the invention that ties its description to the language of the claims. Collectively, the inventors swear behind Venkataramaiah and remove it as relevant prior art. In turn, because Venkataramaiah fails

as a reference, the rejections of claims 21-25, 26-29, and 32-40 as being obviously unpatentable over Vigil in view of Venkataramaiah must be reversed. Similarly, the rejections of claims 26 and 30 as being obviously unpatentable over the Vigil and Venkataramaiah combination, in further view of Petrovskaya must be reversed. For at least this reason, the obviousness rejections are submitted as infirm and the claims are submitted as allowed.

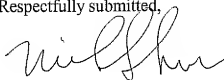
Applicant's "good and sufficient reasons" under 37 C.F.R. §1.116(e) for not earlier presenting this evidence relates to the fact that the Board's order in *Ex parte Messerges* was not decided until November 20, 2007. *See Order Remanding to the Examiner, Ex parte Messerges, Appeal 2007-1662* (B.P.A.I. November 20, 2007). In *Ex parte Messerges*, the Board explained that the filing date to which a 102(e) reference is entitled, for the subject matter on which the Examiner relies, must be determined if the reference claims priority to an earlier filed provisional application. *Id. at p. 3-4*. As the Examiner will recall, Applicant's last response before the Final Office Action was submitted on November 19, 2007. In other words, Applicant's last response before the Final Office Action was submitted one day before the Board made clear that the Examiner must establish the application filing date (when assessing a 102(e) reference claiming priority to an earlier-filed provisional application). Moreover, the effective date of Venkataramaiah was not established until the Advisory Action, mailed March 18, 2008. Therefore, Applicant was unable to make its request and present the evidence earlier.

Applicant submits all claims are in a condition for allowance and no obstacles remain to patentability. If any other matters require attention, please have the Examiner contact the Applicant's attorney at the below-listed telephone number.

Appl. Ser. No. 09/943,786  
First Amendment After Final dated April 8, 2008  
Reply to Final Office Action dated January 11, 2008

***If any additional fees are due, although none are believed due, the undersigned authorizes their deduction from Deposit Account No. 11-0978.***

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael T. Sanderson".

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